

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case Nos. CC/573/2019

Vijay Bihari AgrawalComplainant

Vs.

M/s City Makers Pvt. Ltd.Respondent

Project: Banke Bihari Kunj

For Complainant: Mr. Puneet Siddhartha, Advocate

For Respondent: Mr. P.N. Rai, Advocate

24 /08/2022

ORDER

The matter was last heard on 15.06.2022 and order was kept reserved but, due to pre-occupation, the order in the said case was not pronounced.

The complainant, Vijay Bihari Agrawal, a resident of F.No. 401, Exhibition Road, Ambition Residency, Patna has filed a complaint petition against the respondent M/s City Makers Pvt. Ltd., a promoter and developer company, for a direction to the respondent company to provide physical possession of the flats with car parking, to construct the project as per sanctioned map plan, to construct drainage system and pay interest @10% on the paid amount for the delay caused in handing over physical possession of the flat and compensation of Rs.25,000/-.

In short, the case of the complainant is that the development agreement was executed between the parties on 24.10.2011 and got registered on 25.10.2011. The promoter has agreed to construct the project with an assurance that the construction of the project shall be according to the sanctioned map plan and shall follow Bihar Building Bye Laws and also get approval from fire safety department for installation of fire fighters, proper drainage system, installation of transformer, proper electric system, lift, generator etc. but the promoter has been continuously violating the Bihar Building Buy Laws and sanctioned map plan. The project was to be completed within four years but still it is incomplete. When the complainant asked the promoter for the delay in completing the project, the promoter replied that it is due to

financial crunch. Thereafter the complainant had given Rs.61,50,000/- and booked five flats as allotment to initiate the construction work in the year 2014. It is stated that according to Clause 31 of the development agreement, the respondent has not provided 14 ½ ft. driveway as per the development agreement for entrance to set back of the house of complainant. It is further stated that the promoter neither settled the physical possession of the land owner's share nor given delivery of the flats and the promoter has been selling his share without settling the physical possession to the complainant. The complainant has given several reminders to the respondent to settle his physical possession of the flats but all are in vein. Hence, this complaint.

A notice dated 14.10.2019 was issued to the respondent company under Sections 03, 12, 18 and 19 of the RERA Act, 2016 and Rule 36 of the RERA Rules 2017 to appear and file their reply. In response to the said notice the respondent has filed his reply stating therein that the complaint petition filed by the complainant is frivolous one. The respondent admitted that the development agreement was made between the parties on 24.10.2011 and thereafter, the map was passed by the Authority and the respondent started to construct the building as per agreement but the complainant has not followed the terms and conditions of 37(kh)(3) of the development agreement and he was not ready to take possession of Flat No.A-302, then a supplementary agreement was prepared and the complainant became ready to take possession of Flat No.B-404 and thereafter the respondent has handed over Flat Nos.B-203, B-402 and B-404 to him having an area of 2886.93 sq.f.t. but he has handed over the land of 2681 sq.ft. only to the respondent for which he is liable to pay but he is not ready to pay the dues amount of Rs.33,99,170/- to the builder. It is further stated that the complainant has not given 900 sq.ft. land to the builder in compliance of 37(kh)(3) of the development agreement and in Clause 31 there is no description of 14 ½ ft. driveway. As per agreement dated 24.10.2011 there is also no description of making the height of pedestal of the apartment. It is also stated that the complainant has already filed a separate complaint for providing the physical possession of the flats for which he has made payment of Rs.61,50,000/- and its description has also been made in para-12 of the complaint petition but he has not produced any agreement paper. He has attached the receipt of payment which is without signature of the respondent which goes to show that he is going to play a foul play. It is further stated that the complainant has claimed that the physical possession of Flat No.302 and G-03 were not

made to the him but he has lodged a criminal case in which he admitted that the physical possession of Flat No.302 and Flat No.G-03 and one car parking space has already been handed over to the complainant without making any agreement. The respondent has already registered Flat No. 302 in favour of his daughter Dipati Agrawal and Flat No.G-03 in favour of Tripati Agrawal. So, from the facts stated above, it is crystal clear that the complainant has filed this complaint without any basis and without any document, which is fit to be dismissed.

A petition has also been filed on behalf of the respondent on 14.09.2020 stating that several cases have been filed by the parties which are pending in difference court of law. The complainant of this case filed ABP No. 8228/2019 and the respondent of this case filed ABP No. 6410/2019. Both the anticipatory bail petitions filed by the parties were heard before learned ADJXVII, Patna and the said court sent the matter before the Mediation Centre and both the parties appeared before the Mediator and all the disputes between the parties were settled and a joint compromise petition was also filed before the Mediator. Thereafter both the parties appeared before the learned ADJXVII, Patna and both the parties agreed upon the terms and conditions in the joint compromise petition and raised no objection. Thereafter anticipatory bail was allowed to both the parties. It is stated that as per report submitted by the learned Mediator this case has also been compromised and there is no grievance of either party.

A supplementary affidavit to the counter affidavit dated 14.09.2020 filed by the respondent has been filed on behalf of the complainant in which it is stated that the complainant had filed a representation on 21.04.2014 to the respondent company for constructing a boundary wall around the land. The respondent has submitted the original map before the Authority by changing the date of sanctioning of the map from 08.02.2012 to 08.12.2012 and also inserting forged signature of the land owners. It is further stated that the map plan has already been lapsed after three years i.e. on 08.02.2015 but no effort was taken for revalidation of the sanctioned map plan and obtained the registration certificate by submitting forged sanctioned map plan. It is also mentioned that the registration has already been lapsed on 27.12.2018. The respondent has not constructed a temple on the Terrace of Block A as per supplementary agreement. It is further stated that respondent has sold his 100% share without taking prior consent of the land owner and handing over the completion certificate and the

occupancy certificate. It is evident from the order dated 06.02.2020 of the Mediation Centre that they assured to handover physical possession of Flat No.A-104 in complete stage by 06.04.2020. According to the supplementary agreement the share of the complainant is 3665.2 sq.ft. where the area of 2886.93 sq.ft. has only been handed over to him. Therefore, remaining 778.27 sq.ft. is still to be handed over by the respondent. Apart from the incomplete construction of the flats there are many discrepancies regarding entrance of flats, boundaries, setback area etc. The respondent has misled this Authority regarding completion of the project within the stipulated time. The project is still incomplete. The respondent has not obeyed the terms and conditions of the compromise settled between the parties. It is further stated that as per order passed by the Mediation Centre the possession of Flat No.A104 was to be handed over on 06.04.2020 to the complainant but they have not yet handed over possession to the complainant. The project is being constructed not according to the sanctioned map plan, therefore, he seeks permission to conduct an enquiry into the matter.

A supplementary counter affidavit has been filed on behalf of the respondent on 10.03.2021 in which it is stated that the instant case is false, frivolous and has been filed with malafide intention to mislead the court. The complainant has suppressed the material facts to mislead the court, hence present complaint case is fit to be dismissed. The Authority has no jurisdiction to entertain the instant complaint because the matter involves specific performance of contract. The complainant is not only a land owner but is also a co-promoter as per Section 2(zk) of the RERA Act. The complainant has also received his share in the built up area thereby being covered within the definition of the promoter under the Act. Therefore, the complainant should have to raise his grievance before the Civil Court. The respondent has more or less reiterated the statements made in his reply and prayed to dismiss the instant complaint and award heavy cost on the complainant.

On 06.10.2020 learned counsel for the respondent submitted that both the parties have agreed to compromise. On 14.10.2020 the complainant had filed objection petition to the counter affidavit. On 11.01.2021 learned counsel for the complainant submitted that as per development agreement the respondent was under obligation to complete the work but the respondent has not shown any interest. The complainant prayed for enquiry. The Bench directed the officials of

RERA to visit the site and submit their report regarding present status of the project.

In pursuance of the said direction of the Bench the team of the Committee visited the project on 31.01.2021 and submitted its report as follows:

“There is serious dispute between the land owners and promoter regarding completion of share of land owner, not freeing the space for construction of front boundary wall, gate in the set-back area, guard room and common toilet. Installation of transformer, demarcation of parking area for land owners, rectification of seepage on floor in the basement of parking area, completion of work of Flats which belongs to the complainant/ landlord/ allottee as per the promise made by the promoter and removal of poll which is present in the middle of driveway, installation of door and window in the temple at terrace and also to cover drainage area with proper drainage arrangement.”

On 05.02.2021 the complainant submitted that he is the land owner and the matter was settled as an allottee in the mediation centre and registry was done. He further submitted that after registry the respondent prayed for one month time to complete the work and hand over the possession. Learned counsel for the Authority submitted that the boundary has not been done as yet. He further submitted that in the complainant's share there is no internal wall and finishing has not been done. On 23.12.2021 learned counsel for the complainant submitted that that the registration of the project has since expired and no extension has yet been given to the respondent. The Bench directed the Registration Wing to enquire into the matter. On 04.04.2022 learned counsel for both the parties reiterated the submissions as submitted earlier. On 23.05.2022 learned counsel for the complainant submitted in response to respondent submissions regarding non maintainability of case that the complainant is the land owner. A preliminary objection was raised by the respondent that this case is not maintainable since, he is the land owner. He further submitted that the complainant is the allottee as provided under section 6(3) of the Bihar RERA Regulation, 2021. He submitted that as per the development agreement the construction had to be completed in three years. As per share he has received four flats. No

work has been made till date nor has even bifurcation been made. An inspection has been done and the inspection report has been submitted.

On 11-08-2022, complainant has filed his written statement along with photographs via online and submitted the hard copy of the same on 12-08-2022 stating therein that the complainant who is a landowner had given his land to respondent for developing the same into multistoried building. The development agreement was signed between both the parties and accordingly a supplementary agreement was also signed as per which he was supposed to complete the project and even after mediation taken place, assurance made in compromise petition and till date the building was not completed and handed over by the respondent. It is further submitted that according to respondent he has completed the entire project which is false and fabricated. It has been further submitted that so is the flat no. A 104 which respondent has promised to hand over instead of A-402 earlier allotted in the complaint's shares which was sold by them, in compromise petition before the lower court mediation order i.e. Parapatra-2 but till date it was not handed over with the completion. It has been also submitted that the concoction of the respondent will be evident from the photograph annexed in Annexure 1 wherein it is clearly seen that flat is under construction. It has been further submitted that as per Clause 31 of the development agreement, respondent has to construct a driveway through which complainant can approach to his house situated in the backyard of the building which he has not built till date. The driveway was supposed to start from beside the main gate. Therefore, respondent has contravened the development agreement by not leaving driveway space due to which complainant is having difficulty to transport items through main gate to complaint's house situated at the backyard of the house. It is very much evident from the photograph attached. All the more, the land space before the main gate exists, also belongs to complainant which respondent has left unused and has not constructed any boundary due to which it is being used as public property. It has also been submitted that as per the development agreement, setbacks were to be left which respondent has failed to do, hence again violated the agreement. It has been further submitted that respondent has compromised with the safety of the building and its people as the main gate of the building has also not been properly constructed. It does not have any supportive gate for the main gate to be locked rather; the gate closes in the wall of another building which is an old building belonging to someone else which is evident from the photograph. The respondent

in the development agreement promised to construct a proper gate which would be for the safety of the people residing in the building but has violated it. It has also been submitted that the irresponsibility and carelessness of respondent is clear from the fact that an electric pole has been left standing in the driveway from Block A to Block B of the building. This fact has also come up and has been admitted by the Authority after it was reported in the inspection report of RERA and the Hon'ble Bench had directed respondent to clear the driveway but till date nothing has been done which can be clearly seen in the photograph attached as Annexure-4. It has been submitted that as per the development agreement, and sanctioned plan, the driveway area to be left by the respondent in such a way that a car should pass through Block A and Block B side set back but in actual only 5 ft. area has been left which is very much apparent from the photograph annexed and it is nothing but a formality in the name of drive way was constructed by the respondent to show that they had full field the terms of development agreement. Also, the ground in side set back i.e. drive way area has started breaking down already which raises grave concern regarding the safety and the quality of materials used in construction of the building. It has also been submitted that it was agreed between the parties that respondent would give driveway to go outside of the campus as well as from Block A and B side set back i.e. East & West of the building via a gate which respondent did not consider and has blocked the way rather than constructing a gate. It has been further submitted that that respondent has tried to mislead the Bench by presenting form-XII as Notice (Certificate) of Completion where it has been submitted that project has been completed on 18-12-18 but it is relevant to mention here that how this form is submitted when the project is not complete which is very much evident from the photographs placed. It is also submitted that Architect Mr. Sooraj Bharti who had signed and sealed on Form- XII and stated that building is complete is itself is son of the promoter as well as manager of the respondent company. It is relevant to mention here that Mr. Sooraj Bharti who has examined the building regarding completion has raised question that how the building is declared complete when on reality, it is not completed which need inspection and examination of building by Competent Authority and complainant humbly prays to direct the Competent Authority to examine the same. It has been further submitted that the uncompleted construction of the project will be elucidated from the Sulahnama done between both the parties dated 06/02/2020,i.e.Prapatra-2 whereby the

respondent had prayed to give time of one month to complete the construction of flat. It has been further stated that if the construction of building was completed by 18/12/2018 then how come respondent in his Sulahnama promised to complete the construction in two month in 2020. It has also been submitted that as per the Supplementary Agreement signed in consonance to development agreement where the Share of complainant was allocated, the builder was supposed to construct a room over the top floor of the building which was completed in half way manner and gate was also not fixed, hence, complainant prays to direct the respondent to complete and hand over the same also. It has been further submitted that the complainant has suffered a lot due to such delay and act of the respondent and prays to impose a heavy penalty along with interest for such delay.

During the last hearing on 15-06-2022, learned counsel for the complainant has submitted that an opportunity was given to the respondent to file an affidavit but nothing has been filed. The complainant is the land owner and entered into a development agreement on 24.10.2011. As per development agreement after the map has been sanctioned, his share has to be divided. Four flats have been given to him. He further submitted that they have given Flat No. B-404 instead of Flat No.304 and Flat No. A-402 was allotted to someone else. He further submitted that no wiring, no bath room has been made and the rooms have also not been bifurcated. By the order dated 11.01.2021, inspection was done and finding of the report has been submitted before the Authority. It has been found that the flats have not been completed, no gate has been constructed, fire system is not functional, drainage is not covered, electric pole is in the middle. He further submitted that It is agreed by the respondent that the temple has to be constructed but that is also not constructed. The respondent was also directed to complete one flat i.e. A104 with all amenities. The matter was sent for mediation. In mediation they agreed that they will complete the project within two months but till date the project has not been completed. Possession of three flats has been given. He further submitted that he has filed supplementary affidavit.

Learned counsel for the respondent has submitted that the enquiry report is on record. So far as delivery of possession is concerned, letters of possession have been given to the complainant. There are three flats. He referred to page-27 of the reply to the complaint petition. In terms of the supplementary agreement there were

three flats. So far as completion certificate is concerned, he has filed an application before the competent authority. He further submitted that except the complainant not a single occupant has raised any grievances against respondent. The project is of the year 2011 and they have completed the project before enactment of the RERA Act.

In the light of the submissions, advanced by learned counsel for the parties and documents placed, this Bench deals the issue raised in the present complainant in the following manner:-

As raised by the respondent regarding maintainability of the present case filed by complainant and submissions made that Authority has no jurisdiction to entertain the instant complaint because the matter involves specific performance of contract. The complainant is not only a land owner but is also a co-promoter as per Section 2(zk) of the RERA Act.

The Bench observes that authority has jurisdiction to entertain the complainant under section 31 of the RERA Act, 2016 for any dispute arises between the land owner and promoter in respect of their shares of flat which has been not handed over by the promoter to landowner as per the development agreement or such like arrangement between the promoter and the landowner/s. The Bench also observes that as per Bihar Real Estate Regulatory Authority (General) Regulations, 2021 Section- 6 (3) which reads as follow:-

“In cases where there is a development agreement or such like arrangement between the promoter and the landowner/s, unless otherwise mentioned in the agreement, the landowner would be treated as an allottee under the Act as he is getting apartments in lieu of land . In all such cases the promoters of the project would be responsible for fulfilling all obligations under the RERA Act and Rules made there under.”

In light of the above, the issue pertaining to jurisdiction is found to be within the ambit of Authority”.

As regards issue of handing over of shares of flat and construction of drive way as per the development agreement is concerned, the Bench after the perusal of documents placed observes that a supplementary agreement was signed between the parties on 22-03-12 in consonance to development agreement dated 24-10-2011, where certain flats were allotted to complainant’s shares and out of

which three flats were already handed over to complainant which complainant has admitted and only disputes remain regarding handing over of fourth flats, upon which complainant has submitted that so is the flat no. A 104 which respondent has promised to hand over instead of A-402 earlier allotted in the complainant's shares which was sold by them, in compromise done during bail application moved by respondent before the learned Additional Sessions Judge, XVII, i.e. Parapatra-2 placed on record here. Upon which respondent has placed their Supplementary Agreement where he had shown that the flats allotted i.e. A-302, B-402 & B-203 in complainant's shares are allotted and has placed the allotment letters of the said flats allotted to complainant which the complainant has objected that by stating that respondent has placed a fabricated Supplementary Agreement disturbing the shares of flat allotted and made reference to Supplementary Agreement, he brought on record.

In response to shares of complainant and the documents placed by parties, the Bench observes that this Bench will not go into the genuines of documents as it is the matter of court of evidence but from the perusal of Sulahnama done between both the parties dated 06/02/2020, i.e. Prapatra-2 placed on record, it is very much evident that the respondent has promised to deliver the flat no. A 104 instead of A-402 within 2 months, hence, Bench is in view that only this flat has not been handed over to complainant and rest are handed over as per the Development Agreement and Shares allotted to complainant by Supplementary Agreement dated 22-03-12.

As regards, the construction of drive way as per the Development Agreement is concerned, in the light of submissions of both the parties and after the perusal of documents placed, the Bench finds that as per the Development Agreement, respondent has to construct the same and directed to complete the construction of the same as per the sanctioned plan.

As regards the issue of non-completion of work and production of form-XII as Notice (Certificate) of Completion where it has been submitted that project has been completed on 18-12-18, upon this issue, after the perusal of photographs placed by complainant, it very much appears that the flats allocated and other construction work like drive way, outer boundary wall as stated in complaint petition as per the development agreement and sanctioned plan are incomplete and hence, considering the same, the Bench requests the competent authority to

inquire the building that whether the same is completed as per the sanctioned plan or not before issuing completion certificate.

The Bench also takes the notes of the submissions of complainant that uncompleted construction of the project will be elucidated from the Sulahnama done between both the parties dated 06/02/2020, i.e. Prapatra-2 whereby the respondent had prayed to give time of two months to complete the construction work. It has been further stated that if the construction of building was completed by 18/12/2018 then how come respondent in his Sulahnama promised to complete the construction in a month in 2020. Hence, by perusal of Sulahnama done between both the parties dated 06/02/2020, i.e. Prapatra-2, the Bench observes that submissions of Form XII i.e. Notice (Certificate) of Completion is contrary to sulahnama i.e. Prapatra-2.

As regards the complainant application u/s 60 of the RERA Act, 2016 and forged map is concerned, The Bench perused the records of the registration section. From perusal of the records, it appears that on 08-02-2012, Architect was competent to approve the map of the project in year 2012. Accordingly, the submitted map was approved by the Architect Sri. Jiwachh Kumar on 08.02.2012 and on the basis of this approved map, the project was registered with RERA on 21.10.2018 because this map was approved by the competent authority on date and RERA didn't ask for any other drawing. Now the question of forged drawing is not concerned with RERA, Bihar. Hence, if any issue is rising, then the complainant may approach before the competent authority or before the certified Architect Sri. Jiwachh Kumar, Patna Nagar Nigam, Registration No: 17/2009 to get it verified or claim their issue regarding map raised here.

In the view of above issues discussed, this Bench finds that till date building is not completed as per the Development Agreement executed between the parties and Sanctioned Map, hence, Bench directs respondent and their directors to complete the building in all respect and provide all the facilities as per the Development Agreement executed between the parties and Sanctioned Map within 60 days of issuance of this order, failing which penalty of Rs.5,000/- would be imposed upon them for each day of delay. The Bench further directs respondent to issue possession letter for taking physical possession of the flat no. A 104 instead of A-402 (earlier allotted) as per the Sulahnama done between both the parties dated 06/02/2020, i.e. Prapatra-2 after completing within the time frame stated above and also directs

complainant to take the physical possession after receiving the possession letter.

The Bench takes the notes of submissions of complainant that as per the Supplementary Agreement signed in consonance to development agreement where the Share of complainant was allocated, the builder was supposed to construct a room over the top floor of the building which was completed in half way manner and gate was also not fixed and directs respondent to after completing the same in full sense within the above stated time frame and handover the same to complainant.

The Bench further directs respondent to pay interest at rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for two years plus two percent in the light of section 18 for delaying in handing over the physical possession of flat by completing it in all respect from the date of actual handing over the possession of flat till the date the physical possession will be given.

The Bench also impose a penalty of Rs. 2 lakh upon respondent for wrongly submitting the form-XII as Notice (Certificate) of Completion and mentioning therein that building is completed in all respect on 18/12/2018 and directs to deposit the penalty amount within 15 days of issue of this order, failing which, the same shall be recoverable as per section 40(2) of the Real Estate (Regulation & Development) Act, 2016, read with Order 21- Rule -30 of the Code of Civil Procedure, 1908.

The complainant is at liberty to press claim for compensation before the A.O.

With the above observations/ directions, this complaint petition is disposed of.

Let a copy of order be sent to P.M.C., Patna.

Sd/-

**Nupur Banerjee
Member**